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In re Application of

Reich, et al.

Application No. 10/692,108

Filed: October 23, 2003

Attorney Docket No. 135937

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OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed December 20, 2005.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on August 5, 2005, after it was believed that a proper response was received to the non-final Office action mailed May 4, 2005, which set a shortened statutory period for reply of three month from its mailing date. A Notice of Abandonment was mailed December 13, 2005.

Petitioner maintains that a proper and timely response to the non-final Office action was transmitted via facsimile on August 3, 2005. As evidence of the same, petitioner provides a copy of the transmittal containing a certificate of transmission dated August 3, 2005.

Petitioner's argument has been considered and is persuasive. Section 711.03(c) of the MPEP provides, in pertinent part, that:

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into

PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

A review of the copy of the Transmittal Form reveals that it contains a certificate of transmission dated August 3, 2005, that is signed by Nancy M. Grams who also provided a statement of her first-hand knowledge that the response was, in fact, filed on August 3, 2005. Petitioner properly used the protections offered by 37 CFR 1.8 and is, therefore, entitled to assert that the response transmitted August 3, 2005, is timely and complete by virtue of the certificate of transmission dated August 3, 2005, contained thereon. The petition is granted, accordingly.

The copy of the response filed August 3, 2005, is noted.

Further inquiries regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded to Technology Center GAU 2879 for further processing.

/Kenya A. McLaughlin/

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